



## NOTICE OF RULE MAKING

### Arizona Commerce Authority Rule Notice of Rule Making No. 12-03

**1. Rule:**

Amendment to Policy of the Arizona Commerce Authority Regarding Rules, Administrative Policies, Procedures and Guidelines.

**2. Preamble.**

**A. Reference to the specific statutory authority for the rule.**

A.R.S. §41-1005(a)(28).

**B. An explanation of the rule, including the agency's reasons for initiating the rule making.**

The Policy of the Arizona Commerce Authority (ACA) Regarding Rules, Administrative Policies, Procedures and Guidelines establishes the process by which ACA rules, administrative policies, procedures and guidelines are adopted, including the public notice component.

**3. The exact wording of the rule.**

See attached.

**4. The name and contact information of agency personnel with whom persons may communicate regarding the rule.**

Greg Linaman | Chief Administrative Officer / General Counsel  
T 602 845 1255 | M 602 316 9179 | F 602 845 1201 | E [gregl@azcommerce.com](mailto:gregl@azcommerce.com)  
333 North Central Avenue | Suite 1900 | Phoenix, AZ 85004

**5. Where written submissions on the proposed rule may be inspected (by appointment only).**

Arizona Commerce Authority  
333 North Central, Suite 1900  
Phoenix, Arizona 85004

**6. The time during which written submissions may be made and the time and place, if scheduled, where oral comments may be made.**

Written submissions may be made within thirty (30) days after the date of posting of the Notice of Rule Making. No hearing to receive oral comments has been scheduled at this time.

**7. Any known timetable for agency decisions or other action in the proceeding.**

None at this time.

**8. The date of posting the Notice of Rule Making.**

May 24, 2012.

**9. The deadline for the Authority to file a notice of adoption of the rule.**

One hundred and Eighty Days from the date of posting of the Notice of Rule Making.

**POLICY OF THE ARIZONA COMMERCE AUTHORITY REGARDING:  
RULES, ADMINISTRATIVE POLICIES, PROCEDURES AND GUIDELINES**

**I. Purpose:**

Under A.R.S. §41-1005(a)(28), “rules, administrative policies, procedures and guidelines” of the Arizona Commerce Authority (the “**Authority**”) are exempt from Title 41, Chapter 6 of the Arizona Revised Statutes, “Administrative Procedure,” so long as “the Authority provides, as appropriate under the circumstances, for notice of an opportunity for comment on the proposed rules, administrative policies, procedures and guidelines.” The purpose of this policy (the “Policy”) is to set forth the process by the Authority will adopt and amend Rules (as hereinafter defined), including providing opportunity for public comment.

**II. Definitions:**

**A. “Authority”** means the Arizona Commerce Authority.

**B. “Emergency Rule Making”** shall have the meaning set forth in **Section III(G)**.

**C. “Hearing”** means a public meeting concerning a Rule (as hereinafter defined) requested, noticed and conducted pursuant to this Policy.

**D. “Notice of Adoption”** means a notice posted under **Section III(F)(2)** to finally adopted a Rule.

**E. “Notice of Rule Making”** shall have the meaning set forth in **Section III(C)**.

**F. “Policy”** means this Policy of the Arizona Commerce Authority Regarding Rules, Administrative Policies, Procedures and Guidelines.

**1. “Preamble”** means a statement accompanying the Rule that includes (i) reference to the specific statutory authority for the Rule, and (ii) an explanation of the Rule, including the agency's reasons for initiating the Rule Making (as hereinafter defined).

**G. “Public Comment Period”** shall have the meaning set forth in **Section III(D)**.

**H. “Rule Making”** means the process by which the Authority adopts and amends Rules (as hereinafter defined) under this Policy.

**I. “Rule Making Record”** shall have the meaning set forth in **Section III(A)**.

**J. “Rules”** means Authority rules, administrative policies, procedures and guidelines that directly and substantially affect the public. “Rules” does not include Authority rules, administrative policies, procedures or guidelines that principally concern the internal management of the Authority, such as but not limited to Authority policies relating to conflicts of interests, travel and procurement.

**K. “Summary Rule Making”** shall have the meaning set forth in **Section III(F)**.

L. **“Supplemental Notice”** shall have the meaning set forth in **Section III(E)**.

### **III. Process:**

**A. Rule Making Record.** The Authority shall establish and maintain on its website a current, public Rule Making record (the **“Rule Making Record”**) which contains a record of all past and pending Rule Making processes, including the results thereof.

**B. Initiating Rule Making.** The Authority shall initiate Rule Making by posting a notice of proposed Rule Making (**“Notice of Rule Making”**) on its Rule Making Record. The Notice of Rule Making shall include:

1. The preamble.
2. The exact wording of the Rule.
3. The name and address of agency personnel with whom persons may communicate regarding the Rule.
4. Where written submissions on the proposed Rule may be inspected.
5. The time during which written submissions may be made and the time and place, if scheduled, where oral comments may be made.
6. Any known timetable for agency decisions or other action in the proceeding.
7. The date the Rule was sent to the attorney general.
8. The date of posting the Notice of Rule Making.
9. The deadline for the Authority to file a notice of adoption of the Rule.

**C. Request for Notice of Rule Making.** At the same time the Authority publishes a Notice of Rule Making under **Section III(B)**, above, the agency shall notify by regular mail, telefacsimile or electronic mail each person who has made a timely request to the Authority for notification of Rule Making and to each person who has requested notification of all proposed Rule Makings. The Authority may provide the notification prescribed in this **Section III(C)** in a periodic newsletter. The Authority may purge its list of persons requesting notification of proposed Rule Makings once each year.

### **D. Public Participation.**

1. For at least thirty (30) days after posting of the Notice of Rule Making (the **“Public Comment Period”**), the Authority shall afford persons the opportunity to submit in writing statements, arguments, data and views on the proposed Rule, with or without the opportunity to present them orally.

2. The Authority shall schedule a Hearing on a proposed Rule if, during the Public Comment Period, a written request for a Hearing is submitted to the Authority contact person

listed in the Notice. If a Hearing is so requested and then scheduled more than thirty (30) days after posting of the Notice of Rule Making, the Public Comment Period shall be amended to include the Hearing, but not the time, if any, between the end of the original thirty (30) days Public Comment Period and the Hearing. Provided, a second Hearing requested at a Hearing will be not be granted.

**3.** A Hearing on a proposed Rule may not be held earlier than ten (10) business days after notice of its location and time is published in the Rule Making Schedule. The Authority shall determine a location and time for the Hearing which affords a reasonable opportunity for the public to participate. The Hearing shall be conducted in a manner that allows for adequate discussion of the substance and the form of the proposed Rule, and persons may ask questions regarding the proposed Rule and present oral argument, data and views on the proposed Rule.

**4.** The Authority or another presiding officer designated by the Authority shall preside at a Hearing on a proposed Rule. If the Authority does not preside, the presiding official shall prepare a memorandum for consideration by the Authority summarizing the contents of the presentations made at the Hearing. Oral proceedings must be open to the public and recorded by stenographic or other means.

**E. Substantial Changes.** If as a result of public comments or internal review, the Authority determines that a proposed Rule requires substantial change, the Authority shall issue a supplemental Notice of Rule Making (“**Supplemental Notice**”) containing the changes in the proposed Rule. If fewer than ten (10) days are left in the Public Comment Period for the Rule at the time of posting a Supplemental Notice, the Authority shall extend the Public Comment Period for as long as necessary to provide a total of ten (10) days for public comment following posting of the Supplemental Notice.

#### **F. Effective Date of Rules.**

**1. Provisional Effectiveness.** During the ACA’s first fiscal year of operations, and in the cases of “Summary Rule Making” and “Emergency Rule Making” under Section III(G), below, proposed Rules shall take provisional effect on the date of posting the Notice of Rule Making under **Section III(B)**. Otherwise, Rules shall take effect only as provided in Section III(F)(2), below.

**2. Final Effectiveness.** Upon the end of the Public Comment Period, but in no case later than one hundred and eighty (180) days after posting of the Notice of Rule Making, the Authority may finally adopt the Rule by publishing a Notice of Adoption of the Rule on its Rule Making Record, upon which date the Rule shall be finally effective. If a Notice of Adoption is not posted within one hundred and eighty (180) days after posting of the Notice of Rule Making, the Rule shall not take effect and any provisional effectiveness of the Rule shall terminate upon the end of the one hundred and eighty (180) day period.

#### **G. Emergency Rule Making and Summary Rule Making.**

##### **1. Purposes.**

**a. “Summary Rule Making”** means Rule Making for any of the following purposes: (i) repeals of Rules made obsolete by repeal or supersession of the ACA’s statutory authority; (ii) making, amendment and repeal of Rules that repeat verbatim existing statutory authority granted to the ACA; and (iii) repeal of other obsolete Rules or Rules deemed by the ACA to be ineffective as long as the repeal does not increase the cost of compliance or reduce procedural rights of the persons regulated.

**b. “Emergency Rule Making”** means Rule Making when the Rule is necessary as an emergency measure to accomplish any of the following purposes: (i) protect the public health, safety or welfare; (ii) comply with deadlines in amendments to an agency's governing law or federal programs; (iii) avoid violation of federal law or regulation or other state law; (iv) avoid an imminent budget reduction; or (v) avoid serious prejudice to the public interest or the interest of the parties concerned.

**2. Process.** “Summary Rule Making” and “Emergency Rule Making” shall be in accordance with the Rule Making process provided herein, except that the Notice of Rule Making posted to commence Summary Rule Making or Emergency Rule Making shall state that the applicable Rule is being adopted or repealed by Summary Rule Making or Emergency Rule Making, whichever is applicable, and set forth the reasons therefor.

**H. Termination of Rule Making Process.** The Rule making process with respect to a proposed Rule shall be terminated by either (i) the publishing of a notice of termination on the Authority’s Rule Making Record or (ii) the passage of 180 days after the Publication of the Notice of Rule Making without the filing of a Notice of Adoption.